IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 6294 of 2004

Between:

M/s.Lakshmi Srinivasa Traders, Ramavaram, represented by its Managing Partner Mr.M.Gangi Reddy, s/o Ammi Reddy, **..... PETITIONER**

AND

1 The Additional Commissioner of Commercial Taxes (Legal), o/o Commissioner of Commercial Taxes, Andhra Pradesh, Nampally, Hyderabad.
2 The Commercial Tax Officer, Ramachandrapuram,
East Godavari District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly in the nature of writ of mandamus declaring the proceedings of the Additional Commissioner of Commercial Taxes (Legal), Hyderabad dated 23-01-2004 in CCT's.Ref.No.LV(3)/2406, 2514, 2224, 2225, 2317, 2255, 226,2516/03, 167/04, 2405, 2389, 2408/03, 158, 166/04, 2208,2209/03 and 34/04 as illegal, arbitrary and contrary to the order of this Honourable Court dated 30-12-2003 in WP No.27050 of 2003 in so far as which ignored the factum of payment of considerable and substantial amounts towards the disputed taxes and imposing condition as, violating Article-227 of the Constitution of India and also contrary to the judgement of the Honourable Supreme Court in 130 STC 107 in relation to levy of tax on export purchase paddy under Section-5(3) read with Section-15(Ca) of the CST Act, 1956 and consequently directing the second respondent not to take any coercive action for collection of the balance of the disputed taxes in terms of the urgent notice on 20-02-2004 in G.I.No.6280/2003-04 pending disposal of the appeals on the files of Sales Tax Appellate Tribunal.

Counsel for the Petitioner:MR.M.V.J.K.KUMAR, Advocate.

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

The Court made the following :

ORDER : (per Sri Bilal Nazki, J)

This Writ Petition has been filed against an order passed by the Additional Commissioner of Commercial Taxes (Legal), in an application for stay, pending appeal. The Commissioner has granted stay subject to payment of 1/4th of the disputed tax within one month. Though we do not have the full facts of the case and the assessment orders have also not been filed along with the Writ Petition, therefore whatever has been stated in the affidavit, are taken to be facts.

Petitioner contended that he is a Rice Miller and an assessee and he was assessed to sales tax *inter alia* on penultimate purchase value of the paddy used for obtaining rice for sale in the course of export without granting relief of exemption under Section 5(3) read with Section 15(Ca) of the Central Sales Tax Act, 1956 as well as Section 7(b) of the State Act and also on subsequent sales of gunnies. Basically these questions are factual and we are not in a position to decide in the absence of full particulars on these facts.

The learned Counsel for petitioner however insists that the matter was covered by the judgments reported in (1) *Bismillah & Co. Vs. State of Andhra Pradesh* and (2) *Satnam Overseas (Export) Vs. State of Haryana and another*. The question of applicability of the judgments would only arise when the Court is sure of the facts. In the present case, we have pointed out that the total situation is not before us and it is not possible for us to come to a conclusion whether the sale was on penultimate purchase for making export. However, the learned Counsel for petitioner has been fair enough to state that a different view was taken by the Hon'ble Supreme Court in a judgment reported in *Monga Rice Mill Vs. State of Haryana & another*.

In this view of the matter, we do not find merit in the Writ Petition, which is accordingly dismissed. Stay granted on 02.4.2004 is vacated.

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(BILAL NAZKI, J)

18th August, 2004.

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(S.ANANDA REDDY, J)

N.B:-

C.C. in two days.

(B/o)

ajr

To

1 The Additional Commissioner of Commercial Taxes (Legal), O/o

Commissioner of Commercial Tax, Andhra Pradesh, Nampally, Hyderabad.
2 The Commercial Taxes Officer, Ramachandrapuram, East Godavafri District.

3 Two C.Cs. to the GP for Commercial Taxes, High Court Buildings,

Hyderabad (O.U.T)

4 Two C.D. copies.